REPARATIONS

1930-31

SPECIAL REPORT

UPON

ARMENIAN CLAIMS

ERROL M. McDOUGALL
COMMISSIONER

PRINTED BY ORDER OF PARLIAMENT

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1931

—1913] *Price, 10 cents*

REPARATIONS

1930-31

SPECIAL REPORT

UPON

ARMENIAN CLAIMS

ERROL M. McDOUGALL
COMMISSIONER

PRINTED BY ORDER OF PARLIAMENT

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1931

[No. 204—1913] *Price, 10 cents*

REPARATIONS
1930-31

SPECIAL REPORT

UPON

ARMENIAN CLAIMS

ERROL M. McDOUGALL
COMMISSIONER

PRINTED BY ORDER OF PARLIAMENT

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1931

DEPARTMENT OF THE SECRETARY OF STATE

ARMENIAN CLAIMS

SPECIAL REPORT

To His Excellency the Governor General in Council

MAY IT PLEASE YOUR EXCELLENCY:

I have the honour to submit the following Special Report:—

This Commission has been requested to accept for consideration and assessment, under Articles 231 and 232 and paragraph 9 of Annex 1 thereto of the Treaty of Versailles, claims of Canadian nationals, of Armenian origin, for damage alleged to have been sustained by them during the war resulting from acts of the Turkish Government.

These claims, exceeding two hundred in number, are put forward by former Armenian subjects who applied for and obtained Canadian naturalization prior to the outbreak of war in 1914. The damage in respect of which they claim arose during the spring and summer of 1915, due to the destruction or seizure of real and personal property by the Turkish Government in Asiatic Turkey, principally in the vilayet of Erzerum, which property is alleged to have been owned or partly owned by claimants at the time of its destruction or seizure. Claimants appear before the present Commission under the following circumstances.

The majority of the claims were filed with the Dominion Government in the years 1920-21 and were deposited in the files of the Reparation Commission, upon its organization in March, 1923. On November 23, 1923, an agreement or convention was entered into between the British Empire, France, Italy and Japan in virtue whereof an independent body was set up in Paris with representatives from Great Britain, France and Italy (Roumania being later included) for the distribution of a limited fund placed at the disposal of the Commission under the terms of the Treaty of Peace with Turkey, for the reparation of damage suffered by their nationals in Turkey. This Commission was known as La Commission D'Evaluation des Dommages subis en Turquie (hereinafter referred to as the "Paris Commission").

At the request of the British Government the Canadian Reparations Commission transferred to the Paris Commission the claims now in question. (See memorandum counsel for claimants, p. XLVII). This Commission began its work in the summer of 1925 and completed its labours on March 15, 1930. Under procedure adopted by it several thousand claims were heard and disposed of. The Canadian claimants accepted the jurisdiction so assumed, and counsel, on their behalf, put forward their claims and submitted such evidence as was available. It is said that the British delegate, under whose auspices the Canadian claims were presented, recommended awards which were, however, rejected by a majority vote of the Commission, and the result was that the Commission rendered a decision on October 5, 1929, disallowing these claims, in so far as they related to damage to property on the ground of insufficient evidence. Awards were made to those claimants who had sustained loss of relatives, upon a fixed scale of compensation. I shall have occasion to deal more particularly with this aspect of the matter hereinafter. Counsel for claimants has expressed very serious dissatisfaction with the procedure and action of the Paris Commission. After its decision was announced protests were lodged, on behalf of

claimants, with the British Government, claiming that a distributable balance, handed over by the Commission, be allocated to the payment of these claims. The British Government, however, distributed this "reliquat" to the claimants who had already received payments by awarding a further dividend of 2½ per cent on the amounts of their awards. They had already received payments amounting to 52½ per cent upon their claims. Following these ineffectual efforts to have their claims dealt with by the British Government, counsel brought the matter to the attention of the Honourable the Secreary of State for Canada in the summer of 1930, during his attendance at the Imperial Conference. Permission was then accorded to claimants to submit, on or before January 1, 1931, a statement of the grounds upon which they relied in seeking to have the claims considered by this Commission. Counsel for claimants did, on January 1, 1931, submit a memorandum setting up the pretentions of his clients. After some preliminary consideration, it was decided to afford the claimants an opportunity to put forward in person the facts upon which are based their pretention that this Commission has jurisdiction to entertain the claims. Counsel was requested to submit typical cases, in which such evidence as was available and competent would be put in and the nature of his clients' cases fully explained. On March 23, 1931, and succeeding days, the Commission held sittings at St. Catharines, Ont., where many of the claimants reside. It was impossible to fix an earlier date for this hearing due to previously arranged sittings of the Commission in Western Canada. An embodiment of the essential nature of the claims was thus disclosed, together with a clear indication of the evidence which could be offered in support thereof. Counsel for claimants has presented a carefully prepared brief in substantiation of the claims and I desire to express my appreciation of the valuable assistance he has given me in obtaining an understanding of the matters at issue.

Following this brief outline of the course which the proceedings have taken to date, it may be well to repeat summarily the basis upon which the claims are advanced.

As owners or partial owners of real and personal property in Armenia, title to which was vested in the claimants, either by reason of the death of their relatives at the hands of the Turks and the operation of the law of inheritance or in some instances as the registered owners, claimants seek compensation for the value of the property destroyed or seized by the Turkish Government. It is essential to the majority of the cases, as is conceded by counsel for claimants, that the evidence should establish that the massacres of their relatives through whom by inheritance they assert title, should have preceded the destruction or seizure of the property, and counsel has been at great pains, as he must, to give this fact due prominence, not only in the evidence adduced but in his written brief. The manner in which claimants propose to establish ownership of property, the cause of damage and the value of the loss sustained by them will be discussed in a later section of this opinion.

The Armenian massacres and the historical aspects of the relations existing between the Turkish Government and its Armenian subjects has been exhaustively dealt with by the late Viscount Bryce in report delivered to Viscount Grey of Fallodon in 1916 (hereinafter referred to as the Bryce Report).

History records no such tragic fate as that which overtook the Armenian population of Turkey in the year 1915. In furtherance of the age old attitude of hostility of its Armenian subjects, the Turkish Government inaugurated and pursued a policy of extermination of these people, which was carried out with the utmost ferocity and brutality. Bryce Report pp. XXVI:—

> "But a recollection of previous massacres will show that such crimes are a part of the long settled and oft repeated policy of Turkish rulers. . . . . All that happened in 1915 is in the regular line of Turkish policy."

It is estimated that out of a population of approximately 1,800,000 Armenians one-third were ruthlessly slaughtered and the race almost eradicated from

Turkish soil (Bryce Report, pp. 648-651). We are not concerned with the motives which actuated this policy, but, in general, it may be said that such action was not due to any war or political exigency. The war was seized upon as an opportunity to carry out these designs. This view is supported by the undoubted authority of Viscount Bryce. After a careful scrutiny of the evidence presented to him and a thorough consideration of the various reasons ascribed for the massacres his report unqualifiedly discards the attempted explanations put forward by German and other apologists, in this language (pp. 633):—

"The various Turkish contentions thus fail, from first to last, to meet the point, They all attempt to trace the atrocities of 1915 to events arising out of the war; but they not only cannot justify them on this ground, they do not even suggest any adequate motive for their perpetration. It is evident that the war was merely an opportuntiy and not a cause-in fact, that the deportation scheme, and all that it involved, flowed inevitably from the general policy of the Young Turkish Government. This inference will be confirmed if we analyze the political tenets of which the Young Turks were committed."

It is perhaps unnecessary, at this point, to dilate upon the historical features of the matter. I think it should be pointed out, however, again upon the authority of the Bryce Report (pp. 650), that many thousands of Armenians escaped into Russian and other territories. It is difficult, if not impossible, to determine with accuracy the "quantitative scale of the crime," but the Bryce Report estimates that about an equal number of Armenians in Turkey seem to have escaped, to have perished and to have survived deportation in 1915. Each category is placed at the approximate figure of 600,000. This fact will have a later significance.

With this material before it, this Commission is asked to assume jurisdiction of these claims as being properly the subject of consideration and assessment of damage sustained. It is asserted that the claims fall within the ambit of the Treaty of Versailles and are covered by the Reparation provisions thereof. The relevant sections of the Treaty are sections 231 and 232 of Part VIII with Annex I thereto, section 9. These sections read as follows:—

"ARTICLE 231

"The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.

ARTICLE 232

"(First Two Paragraphs)

"The Allied and Associated Governments recognize that the resources of Germany are not adequate after taking into account permanent diminutions of such resources which will result from other provisions of the present Treaty, to make complete reparation for all such loss and damage.

"The Allied and Associated Governments, however, require, and Germany undertakes, that she will make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of Belligerency of each as an Allied or Associated Power against Germany by such aggression by land, by sea and from the air, and in general all damage as defined in Annex I hereto.

"ANNEX I

"Compensation may be claimed from Germany under Article 232 above in respect of the total damage under the following categories:—

. . . . . .

"(9) Damage in respect of all property wherever situated belonging to any of the Allied or Associated States or their nationals, with the exception of naval and military works or materials, which has been carried off, seized, injured or destroyed by the acts of Germany or her allies on land, on sea or from the air, or damage directly in consequence of hostilities or of any operations of war.

. . . . . ."

Paragraph 9 of the Annex is relied upon as establishing jurisdiction. If claimants cannot qualify under this section, it is conceded that they have no status before this Commission.

After very careful, and, I may say, anxious thought, I have reached the clear opinion that these claims cannot be admitted for assessment before this Commission for the following reasons, which will be discussed in detail:—

I. Claimants have failed to show that their claims fall within the Reparation provisions of the Treaty of Versailles—sections 231, 232 of Part VIII and the Annex thereto, or that they qualify to recover thereunder.

II. These claims were submitted to and dealt with by the Paris Commission and claimants are thereby precluded from presenting them anew to this Commission.

III. Even were jurisdiction to be assumed, the evidence submitted, and to be submitted, does not and cannot constitute proof of the demands made.

I.

Let us assume, for the purpose of the present argument, that claimants have established that they had become the rightful owners, by virtue of the operation of the law of inheritance, of the lands and properties which the Turks destroyed. They must then show that the destruction of this property resulted from an act of war or in consequence of hostilities. As I read the relevant sections of the Treaty of Versailles (Part VIII, sections 231 and 232, Annex 1, section 9, above quoted) it is only losses *directly* sustained by an act of war that form the basis of an award. I do not regard the action of the Turkish Government in respect of its Armenian subjects as such. The concluding words of paragraph 9 clearly relate to "property" mentioned in the first line. But for the damage to be cognizable by this Commission, it must have resulted "directly in consequence of hostilities or of any operations of war." The term "hostilities" implies and involves enemy activities and cannot be construed to mean the action of a power in quelling an insurrection of its own people, or, as in this case, a wholesale slaughter of its own subjects. Nor can such action by the Turks be regarded as an "operation of war." If that were so, every disciplinary action of a belligerent directed to its population or armed forces would necessarily be an act of war. The immensity of the destruction wrought upon the Armenians does not raise the act to the dignity of either a "hostility" or an "operation of war." The use of the word "aggression" in the last line of Article 231 of the Treaty is significant and consistent with this view of the combined purport of the Annex and the sections of the Treaty quoted. Upon the high authority of Viscount Bryce (infra pp.5), I have formed the opinion that the war was merely a cloak for the depredations committed—the consummation of traditional Turkish policy, which could be and was perpetrated with impunity due to the preoccupation of civilized nations in the world war. This view of the bearing of the Treaty sections is strongly and ably controverted by counsel representing claimants, and I confess that I might have some hesitation in deciding the cases upon that ground alone.

Unfortunately for claimants, however, or for the great majority of them, they cannot place their claims upon the possibly advantageous ground of an unqualified interpretation of the sections in question. They are forced to adopt a far more tenuous position. They must rely upon the alleged fact that the massacres preceded the seizures. Counsel for claimants quite clearly takes this position at p. 9 of the transcription of the evidence taken at St. Cath-

arines. He says: "If it would appear to be quite definite the taking of the property preceded the massacres, I would not have a leg to stand on." Clearly had the seizures preceded or accompanied the massacres, the injured persons would be the then owners of the properties, who were not British subjects but Turkish nationals.

Have claimants established this insecure postulate? I think not. The undoubted facts are opposed to such pretention. The Bryce Report (pp. 637 and 638) makes it clear that there was no such settled policy on the part of the Turks, though there was an essential unity of design underlying the procedure adopted. In some cases the massacres preceded the seizures, in others the seizures antedated the slaughters. In many instances, refugees were permitted to take with them parts of their household effects and personal possessions, in other cases this privilege was denied them. Bryce Report, document No. 54, at p. 229:—

"They were not prohibited from selling or disposing of their property, and some families went away with five or six or more ox-carts loaded with their household goods and provisions. The missionaries confirm this."

One of the witnesses heard in St. Catharines (Mrs. Serpoohie Kudurian) clearly indicates that the seizures were operated concurrently with the deportation of the villages. At p. 85, when asked what orders were given by the Turks as to leaving property behind, she says that the answer given was, "Anything you people have got belongs to the Government. You have two hours to get out of town." Again at p. 87, in describing the conditions when she left the village she declares, "Yes. They destroyed everything right in front of our eyes; whatever we could not take away". Asked at p. 94 whether anything was left in her home when she went out of the village, she says, "They had it all piled up and two soldiers were there so nobody could touch it. They wanted to take it in the army. Even they took our coats or anything nice we had on us." It is true that this evidence is not consistent with that given by other witnesses, who were at pains to declare that the seizure of property in every case followed the massacres, but the statement of the witness quoted carries conviction since it is in harmony with the facts related and found in the Bryce Report.

The policy of the Turkish ministry while uniform and constant in its intention to eradicate the Armenians from Turkish soil was not always identical in its mode of execution. The attempted distinction that one event may have preceded the other, to my mind is not material and should not be given undue prominence. Whether the property of these unfortunate deportees was taken before or after they had left their villages, there was always, in fact, or constructively, a seizure or taking by the Turkish authorities which, in my opinion, was warp and woof of the one general policy. This being so, the present claimants were not dispossessed—the sufferers were Turkish citizens, the persons through whom, by legal inheritance, claimants now make claim.

It has been said that the deportees were informed when evacuated from their villages that they would soon return and should therefore make no effort to take with them any of their property. Such promise, if ever made, was known by the refugees to be false, and there was never any intention to implement it. The Bryce Report deals with this aspect of the matter as follows, p. 642:—

"There was an official fiction that their banishment was only temporary, and they were therefore prohibited from selling their real property or their stock. *The Government set its seal upon the vacated houses, lands and merchandise,* 'to keep them safe against their owners' return:' yet before these rightful owners started on their march *they often saw these very possessions,* which they had not been allowed to realize, *made over by the authorities as a free gift to Moslem immigrants,* who had been concentrated in the neighbourhood in readiness to step into the Armenians' place."

It will be observed from the foregoing, as above pointed out, that there is little foundation in fact for the statement that the seizure or taking in every

case followed the deportation. The evidence and authority quoted establishes definitely, in my opinion, that there was in some cases an actual, in others a constructive taking of possession carried out contemporaneously with the deportations. In the language of the Bryce Report above quoted,

"The Government set its seal upon the vacated houses, lands and merchandise."

Turkish policy was directed, not against British subjects, but against Turkish citizens, and the mere fact that one step in the procedure of executing such policy may have preceded or followed the other is not material. That the events generally followed the alleged sequence was probably due, as suggested by counsel for claimants, to deference or fear of their German allies. The atrocities would not be so evident if carried out in remote and desolate parts of the interior.

On this branch of the case, therefore, I conclude that claimants have no status before this Commission. They have failed to discharge the burden resting upon them of showing that they have suffered damage resulting from the acts complained of which would entitle them to compensation under the relevant sections of the Treaty of Versailles. It may be contended that this opinion will apply only to those claimants who claim ownership through descent from Armenian relatives and cannot apply to those who were owners, in their own right, of property destroyed or seized. I have no information as to the number of claimants in this category, but, not without hesitation, I hold that they too must fail, upon a strict application of the Treaty sections to which I have referred. Moreover, upon the grounds next to be considered, I think they are without right.

II

As pointed out in the opening paragraphs of this opinion, these claims received consideration before the Paris Commission. Counsel for claimants complain that the cases did not receive the same attention given to other claims and that discrimination was shown in rejecting the demands for compensation for damage to property. It appears from his statement that in other cases subcommissions were sent into the devastated areas to collect evidence in support of the claims, but that in the case of his clients the Commission failed to take any action, and that finally, in 1928, claimants themselves applied for and obtained an extension of time within which to obtain the necessary evidence substantiating their cases. I quote from statement of counsel, at the St. Catharines hearings (p. 17) ".. .. .. so I asked for some time to consider the matter, and I saw the British Delegate and I obtained from him an extension of the time in which to complete the evidence and was forced to undertake to obtain the evidence myself." This evidence was eventually submitted, and it is alleged that the British Delegate recommended that awards should be granted. In memorandum submitted counsel declares: "That is to say that he accepted that the claims had been established." Claimants urge so strongly unfair treatment before this Commission that I consider it advisable to quote extensively from the Report of the British Delegate, Sir Elliott, Colvin, which has been furnished to me through governmental channels. The files themselves, returned from the Paris Commission, in all instances bear the notation "accepted" or "rejected," and in explanation of this counsel in his brief (p. 4, part 2) says, "finally to save appearances a 'solatium' was granted in certain cases for the loss of a wife or child in the massacres of 1915. The actual amount paid was £ Stg. 47 for a wife and £ Stg. 9 for a child, but, in spite of repeated appeals, Commission refused any award in cases of damage to property." It is therefore desirable that the precise circumstances of the action taken, as disclosed by Sir Elliott Colvin's Report, should be quoted. Referring to the Canadian Armenian claims, he says:—

"The assessment of these claims, from Armenians who claim to have been naturalized in Canada before the War, has provided one of the most difficult tasks with which the Commission has had to deal. There were, in all, 208 claims of this character, arising out of the loss of property, mostly in the neighbourhood of Erzeroum, but a few also from the neighbourhood of Van, Diabekir and Trebizonde. The claimants in all cases alleged that they were the owners, or the heirs of the owners, of the property in question, and that the properties had been destroyed or confiscated by the Turkish Government, and that many of their relatives, indeed all their relatives who remained on the spot, had been killed by the Turks in the course of the Armenian massacres. The claimants demanded compensation for the loss of the property and the murder of their relatives.

"Seeing that the Turkish Government would not permit the entry of any foreigners into this part of their territory, the difficulty of arriving at an assessment or collecting any data on which a reasonable assessment could be made, was obvious. Eventually, in January, 1928, an offer from the French Delegate to entrust the inquiry into these cases to a French Consular Officer (M. Malzac) who was being sent to Erzeroum, was accepted. On examination of the 208 claims, it was found that about 40 were liable to rejection owing to want of proof of Canadian naturalization, or for other reasons, but a list of the remaining 168 cases with a questionnaire giving the circumstances of each claim was forwarded through Mr. Jesse Curely to M. Malzac, the officer of the French Consular Services in question.

"Meanwhile, in April, 1928, the Embassy in Constantinople who had previously expressed their inability to conduct an inquiry into these cases, informed the British Delegate that it might be possible to send a British officer to Erzeroum for the purpose. It was, however, understood that M. Malzac had already begun his inquiries, and for this and other reasons the British Delegate decided against accepting the Constantinople offer. On the 16th November, however, the French Delegate informed the British Delegate that M. Malzac had not yet started for Erzeroum, the difficulties of the journey, owing to the routes being infested by Kurdish bandits, being insuperable, anad it was added that as this difficulty was not likely to diminish or disappear, the French Government had abandoned the idea of sending M. Malzac to Erzeroum.

"The British Delegate then decided to prepare the cases for the Commission on such evidence as might be obtainable, and to explain the difficulties of making an assessment, and to appeal to the Commission to accept the fact of the complete loss of the properties and to be indulgent generally in the matter of strict proof. The cases were grouped in classes, based mainly on ownership rights or on propinquity of relationship to the deceased owners, and typical cases of each class were assessed and submitted for approval to the Commission. This broad and general method of valuation did not, however, commend itself in the absence of evidence to the majority of the Commission, and other methods of assessment had to be sought.

"Meanwhile, on the 19th November, 1928, certain legal representatives of a large body of the claimants informed the British Delegate that the restrictions on local investigations in Armenia had now been removed, and that the claimants were sending their representative to the areas concerned to obtain proof in support of their claims. On this the Commission decided that further time must be given, and that in order to avoid delaying the general distribution to French, Italian and British claimants, a sum of £T (or) 20,000 should be set aside for the satisfaction of these Canadian Armenian claims. As it was known at that time that there would be a large surplus also from the sum set aside for the Roumanian claims, the British Delegate considered that he would be justified in accepting this arrangement. Accordingly, the Canadian Armenian claims were again held back, and eventually these claimants, with three separate postponements of the date for the consideration of their cases, were allowed up to the 30th September, 1929, for the production of the promised evidence. On that date the Commission examined the cases, but the French and Italian Delegates adhered to the position that definite proof must be supplied, not only of the naturalization of the claimants, but also of the existence of the properties and of the relationship of claimants to deceased owners.

"The local inquiry promised by the claimants representatives had unhappily proved to be an entire fiasco. There was still no proof of ownership, no proof of extent of damage, and no proof of relationship. The Turkish Authorities would not in any case have been prepared to give extracts from the old registers, still less extracts to prove the damage or confiscation that had occurred; indeed, it is said that the old Land Registers had been deliberately destroyed. The only fresh evidence which had been furnished during the nine months of postponement was evidence obtained from other Armenians in Canada, many of whom were themselves claimants. Naturally, on the basis of strict proof of damage, it was obvious that every one of the cases would have to be rejected, the only two facts that were established being that the claimants were naturalized in Canada before the war, and that most of them were relatives of Armenians who were massacred by the Turks in 1917 (sic). Yet the British Delegate felt that it was extremely probable that many of the claimants had suffered real and direct damage to their rights in Armenia, though it was impossible to establish the exact nature of the rights, or the extent of the damage. He pointed out to his

colleagues that it would be impossible for him to agree to the rejection of the whole of these cases, and that the rejection of such a large body of claims which were no doubt in many cases substantially justified, though not legally proved, would reflect unfavourably on the Commission's general sense of equity.

"Eventually, after discussion, it was decided that those of the claimants who had lost a wife or children during the massacre of 1917 (sic), might be regarded as having retained a fairly close connection with the villages and farm-steads from which they came, and that the best method for granting a small solatium to these claimants would be on the basis of compensation for wives and children actually so lost. These cases were therefore finally passed on this basis, and the total amount awarded to these claimants was fixed at £T (or) 9,440. Here again it was impossible to touch the cases in the revision proceedings."

It is evident from the foregoing that claimants accepted the jurisdiction of the Paris Commission, were represented by counsel thereat, adduced evidence and submitted their cases for decision, which, as indicated, was reached only after very careful consideration. The decision given is in the following language:—

"PROCES-VERBAL de la 67ième SEANCE tenue le 30 septembre 1929

"Etaient présents: Sir Eliot Colvin (Président)
M. Tripepi
M. Jesse-Curely
M. Giraudoux (Secrétaire Général)

"La Commission après un examen approfondi des réclamations des arméniens-canadiens, estime, qu'étant donné le manque de preuves et l'impossibilité de pouvoir en obtenir, ces réclamations ne peuvent être jugées d'après les mêmes principes que les autres. La Commission a donc decidé:

"(1) d'écarter toutes les réclamations pour propriétés par suite d'héritage; (2) d'attribuer un solatium aux réclamants ayant perdu leur femme et leurs enfants au cours des massacres qui ont eu lieu pendant la guerre, le fait d'avoir laissé sa famille en Arménie étant le signe que le réclamant avait conservé des liens réels avec son pays d'origine. L'évaluation du solatium a été de 100 LTor pour la femme et de 20LTor pour chaque enfant."

I am not concerned with the reasons which may have impelled the Paris Commission so to decide the cases; I have no mission to revise, confirm or modify such decision. I am informed that the evidence put before that Commission was practically the same as the evidence which is now available (some of which has been adduced). Claimants have had their day in court—they voluntarily submitted to the arbitrament of that tribunal, and now, having failed of their purpose, they seek to have another tribunal reopen their cases.

Quite apart, therefore, from the grounds of dismissal set up in section I of this opinion, I consider that claimants—and this applies to all claimants—are precluded from presenting their claims anew to this Commission. I should say that they are estopped upon the record. (See Everest & Strode "Estoppel" 3rd Ed. p. 45.)

III

As a practical matter, even were I to accept these claims for consideration and assessment, have claimants made out such a case as will permit of the assessment of damages. In other words, have these claimants proven or can they prove a loss suffered by them, susceptible of being measured with reasonable exactness by pecuniary standards? It is conceded that no further evidence than that submitted by documents and the testimony of witnesses heard in St. Catharines can be adduced. With the exception of the oral testimony of various refugees, describing their experiences during and following the massacres and verbal evidence tending to establish title to property in various individual claimants, the evidence is entirely similar to, if not identical with, the evidence submitted to the Paris Commission. As to the weight or value of this evidence, reference may be made to the remarks of Sir Elliott Colvin, in the extract from his report, quoted above, at p. 9.

As stated by counsel for claimants, in his brief, it was necessary to provide evidence upon the following points:—

1. Canadian nationality prior to the date of damage.
2. Ownership of property seized or destroyed.
3. Cause of damage.
4. Amount of loss.

On the question of nationality there is no difficulty. Certificates of naturalization granted the claimants before the war constitute complete proof. The Paris Commission apparently passed upon this point, as appears from notation upon the files, and determined the personal status of each claimant.

2. To establish ownership of property is more difficult. Those claimants who seek to recover on the basis of having inherited from relatives who were massacred, bring forward, by affidavit and witnesses, testimony of persons who resided in the same village or area as the slaughtered relatives. They say that they knew the families of the claimants, that they were aware that such families resided upon such and such properties, and they endeavour to fix with some accuracy the size, nature, buildings and contents of the various properties concerned. This evidence is offered upon the theory that the best evidence cannot be obtained, and, upon principles of the admission of secondary evidence, such testimony is urged as constituting proof of title. It will be seen at once how dangerous it would be to accept such evidence as constituting proof of the facts. In the first place these witnesses cannot know of the state of the title at the time it was taken—the owner may have transferred, mortgaged or otherwise dealt with his property, and it would be manifestly improper to make an award for damage which, quite conceivably, never arose, due to possible mutations in the title of the original holder. It is also a matter of conjecture whether, by will or otherwise, the title to the property might not have vested in other persons. Again, the vesting of title in these claimants is predicated upon the presumed death of all other relatives having an interest in the property. While this may, in general, having regard to the immensity and completeness of the massacres, be regarded as a reasonable presumption, yet it is by no means conclusive. Tens of thousands of refugees escaped the slaughter and took refuge in foreign territory (supra p. 5). That some of these, having claims equal with or even superior to those of the present claimants, are not still alive, has not and cannot be established. It would be the merest conjecture to say in any particular case that the claimant had shown that he and he alone was entitled to an award. As to those claimants who claim as registered owners, they are in equally bad plight. They were not living on the properties at the time and it would be the scantiest hearsay for witnesses to declare that such claimants were the owners of such and such properties. Putting the point forward in the most advantageous light from claimants point of view, counsel thus indicates the evidence upon which he relies to prove title:—

"In such cases ownership will be proved by claimant's affidavit giving full details of property supported by the affidavits of persons who knew both claimant and the property. In other words, a document of title now being non-existent, the commissioner will be asked to accept what amounts to secondary evidence of its existence.

"In the majority of cases, the claimants were the heirs to property which belonged to their parents who were Turkish subjects and were massacred in 1915. In these cases the evidence of ownership by parents will be given in the way already stated; but it may be considered necessary to show that the property *had passed to the Canadian claimant from its previous Turkish owner* before the date of damage, i.e., to establish that the damage was caused to the property of a British and not a Turkish subject."

This evidence falls far short of legal proof and would not be accepted by a court of law. It is urged, however, that I am not bound by rules of law and should decide these cases upon principles of equity and justice. That is quite

true, but there must be, at least, such proof as will create the conviction that the claimants are entitled to succeed. As I view them the claims are inchoate, the evidence offered as to ownership and loss sustained is conjectural and speculative; it does not constitute proof, and I am bound to declare that, however much the claimants may have suffered, the essential elements of proof to permit of an assessment of the damage sustained are lacking.

It is asserted that these claimants should not be penalized because of their inability to furnish better proof, through the destruction of the land registry records by the Turks and all papers relating thereto. But that is not the point. Inability to furnish proof, however distressing and difficult may be the circumstances, cannot by that fact create a legal claim. That it may or may not entitle their claims to consideration upon another basis and from another authority is perhaps possible, but as far as this Commission is concerned they cannot succeed.

3. The cause of the damage is clearly demonstrated, but as above pointed out, claimants have failed to show that the damage was caused to them.

4. The amount of the loss presents a further obstacle to claimant's success. It is, and apparently has been, impossible to fix by expert evidence the precise amount of damage which any particular claimant has suffered. No definite sums have been claimed. As stated by counsel, claimants " rely upon the report of the experts of the Paris Commission, as regards the probable quantities and values of their clients' properties. The Commissioner will be requested to establish categories into which the claims will fall, based upon that report." The report referred to, a copy of which has been produced and which was also submitted to the Paris Commission, as I understand it, has been prepared by the architectural and agricultural experts who were employed by the Paris Commission in Turkey and consists of an outline of the conditions and mode of life in Armenia on the outbreak of war, the different types of property and the values of the period. Upon such general information and the experience of the experts the report proceeds to " establish minimum values for real and personal property. It divides agricultural properties into three categories, small, average and large. It gives details of the structures which would be necessary and would be certain to have existed on each type of farm; and sets out the relative quantities of stock, implements and personal property which would have existed in each case. It shows minimum and probable maximum quantities and values in each case." Admirable as may be this report, it forms an insecure foundation upon which to assess damages, particularly having regard to the dubiety of the claims themselves.

On the whole, therefore, I am compelled to find that claimants could not and cannot furnish this Commission with the necessary elements of proof to enable me to render an award in their favour.

All which respectfully submitted for Your Excellency's consideration.

ERROL M. McDOUGALL,
Commissioner.

Ottawa, May 9, 1931.